REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-5, 12-14, 50, 52, 56, 57, 64, 65, 73, 74, 82, 84, 86, 88-91 and 102-135 are presently active in this case.

In the outstanding Office Action, Claims 1-5, 12-14, 50, 52, 73, 74, 82, 84, 86, 88-91 102, 104-108, and 110-125 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Hull et al. (U.S. Patent No. 5,806,005).

However, Claims 56, 57, 64 and 65 were allowed, and Claims 103, 109, 126-135 were indicated as allowable if rewritten in independent form. Applicant acknowledges with appreciation the indication of allowable subject matter. Applicant respectfully points out that Claims 104-107 depend from allowable Claim 103 so that Claims 104-107 are also believed to be allowable. Similarly, Claims 110-113 depend from allowable Claim 109 so that Claims 110-113 should also be allowable.

In response to the rejection of Claims 1-5, 12-14, 50, 52, 73, 74, 82, 84, 86, 88-91 102, 104-108, and 110-125 under 35 U.S.C. §103(a), Applicant respectfully requests reconsideration of this rejection and traverses the rejection, as discussed next.

Briefly recapitulating, Applicant's invention relates to an information processing apparatus and methods of processing information. Independent Claims 1, 4, 5, 12, 73, 82, 84, 86, 88, 90 recite the feature of capturing information including at least time information. In certain claimed embodiments (e.g., Claims 1-5, 12-14, 50, 52, 73, 74, 82, 84, 102, 104-108, and 110-113, 118-125), captured information is stored and information associated with the stored information is acquired on the basis of the stored information. In a preferred

embodiment, the time information corresponds to a time when a music is playing and the acquired information relates to the music.

Turning to the applied prior art, the Hull et al. patent discloses an image transfer system 10 with a remote station 12 coupled to a server station 14 via a cellular telephone system 16. The remote station 12 includes a digital camera made up of a capture device 20 and an image memory 24, which is configured to hold a small number of images captured by the capture device 20. A CPU 22 is coupled to the image memory 24, a modem 26 and a cellular telephone transmitter 28. The coupling between the various elements is such that the CPU 22 can control the image memory 24 to transfer data representing an image from the memory 24 to the modem 26, which converts the image data into a signal suitable for transmission over a telephone line. The modem 26 is coupled to provide that signal to the cellular telephone transmitter 28, which transmits the signal through cellular system 16 to modem 56 of server station 14.

The outstanding Office Action states that the Hull et al. patent discloses "acquisition circuit means (22) for acquiring data associated with said captured information, on the basis of said information."[1] However, the Hull et al. CPU 22 executes a program with instructions to periodically read an image from the image memory 24 and mark the image as being read, allowing the image memory 24 to be overwritten by subsequent images.[2] In other words, the CPU 22 does not acquire data associated with the captured information (images captured by the capture device 20), much less information associated with the stored information *on the basis of the stored information*. Therefore, the applied prior art fails to teach every element of the claimed invention. Accordingly, Applicant respectfully traverses, and requests

[1] Outstanding Office Action at page 2, lines 6-7 from the bottom.
[2] The Hull et al. patent at column 2, lines 38-42.

reconsideration of, the rejection of Claims 1-5, 12-14, 50, 52, 73, 74, 82, 84, 102, 104-108, and 110-113, 118-125 based on the Hull et al. patent.[3]

Applicant further traverses the rejection of Claims 1-5, 12-14, 50, 52, 73, 74, 82, 84, 86, 88-91 102, 104-108, and 110-117 and 119-125 because the Hull et al. patent fails to teach or suggest capturing time information, as recited in these claims. The outstanding Office Action states that "Hull fails to disclose time information, however, the use of a time stamp in a camcorder was a notoriously well-known feature at the time of the invention, and as such [examiner] takes Official notice of such a feature, asserting that it would have been obvious to use such a known feature in Hull." Applicant respectfully traverses this ground for rejection because there is no specific factual finding nor concrete evidence in the record to support this general conclusion. "General conclusions concerning what is 'basic knowledge' or 'common sense' to one of ordinary skill in the art without specific factual findings and some concrete evidence in the record to support these findings will not support an obviousness rejection."[4] Here, it is not clear from the record that a time stamp was notoriously well-known *at the time of the invention.*

Furthermore, the record fails to establish why a person of ordinary skill in the art would have found obvious using such a time stamp in the Hull et al. image transfer system. The Hull et al. patent is concerned with increasing the image storage capacity without unreasonably impacting the price, size and weight of the camera.[5] The Hull et al. patent is *not* concerned with recording the time of the captured image. The Hull et al. patent does not

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[3] See MPEP 2142 stating, as one of the three "basic criteria [that] must be met" in order to establish a *prima facie* case of obviousness, that "the prior art reference (or references when combined) must teach or suggest all the claim limitations," (emphasis added). See also MPEP 2143.03: "All words in a claim must be considered in judging the patentability of that claim against the prior art."

[4] MPEP 2144.03-B, citing *In re Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002).

[5] The Hull et al. patent at column 1, lines20-23.

suggest that some time capture feature is needed to achieve its goal of increasing image storage capacity. While the required evidence of motivation to modify a prior art system need not come from the prior art reference itself, the evidence must come from *somewhere* within the record.[6] In this case, the record fails to support the proposed modification of the Hull et al. system. Without such motivation and absent improper hindsight reconstruction,[7] a person of ordinary skill in the art would not be motivated to perform the proposed modification, and Claims 1-5, 12-14, 50, 52, 73, 74, 82, 84, 86, 88-91 102, 104-108, and 110-117 and 119-125 are believed to be non-obvious and patentable over the applied prior art.

Consequently, in view of the present response, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal Allowance. A Notice of Allowance for Claims 1-5, 12-14, 50, 52, 56, 57, 64, 65, 73, 74, 82, 84, 86, 88-91 and 102-135 is earnestly solicited.

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[6] In re Lee, 277 F.3d 1338, 1343-4, 61 USPQ2d 1430 (Fed. Cir. 2002) ("The factual inquiry whether to combine references ... must be based on objective evidence of record. ... [The] factual question of motivation ... cannot be resolved on subjective belief and unknown authority. ... Thus, the Board must not only assure that the requisite findings are made, based on evidence of record, but must also explain the reasoning by which the findings are deemed to support the agency's conclusion").

[7] See MPEP 2141, stating, as one of the tenets of patent law applying to 35 USC 103, that "[t]he references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention."

Should the Examiner deem that any further action is necessary to place this application in even better form for allowance, the Examiner is encouraged to contact Applicant's undersigned representative at the below listed telephone number.

Respectfully submitted,

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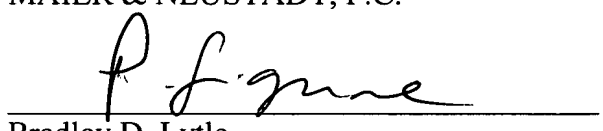

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